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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 720,629	02 28 2001	Atsushi Matsunaga	13006-077	2515

7590 11 19 2002
Fildes & Outland
Suite 2
20916 Mack Avenue
Grosse Pointe Woods, MI 48236

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11 19 2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/720,629

Examiner

Cheryl Juska

Applicant(s)

MATSUNAGA ET AL.

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 8-13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claims 8-13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 8-13 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 7 are indefinite because it is unclear what the thermally bonded filaments of claim 5 can be "partially bonded with heat and pressure with each other or thermally bonded at contact points of the filaments." If the filaments are thermally bonded in claim 5, then claims 6 and 7 can further limit claim 5 by stating the filaments are thermally bonded at the contact points. However, it is then unclear how the phrase "partially bonded with heat and pressure" further limits the thermally bonded filaments of claim 5. Are the filaments now only partially bonded? Do the filaments require pressure in addition to the thermal energy to bond?

Art Unit: 1771

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 765 959 issued to Nagaoka et al.

Applicant claims a nonwoven fabric comprising polylactic acid-based filaments, having either a round or non-round (i.e., lobal) cross-section and either monocomponent or bicomponent (i.e., side-by-side, sheath/core, islands in the sea). The filament has a specifically claimed birefringence and a crystallization degree of 13-25% by weight. The nonwoven has a specifically claimed heat shrinkage percentage. The filaments of the nonwoven are thermally bonded with each other at contact points or partially bonded via heat and pressure. Additionally, the filaments of the nonwoven fabric are three-dimensionally entangled with each other.

Nagaoka discloses a nonwoven fabric made of polylactic acid filaments (abstract and claim 1). The filaments are partially bonded together to form the nonwoven by means of heat and pressure (claim 2). The nonwoven is three-dimensionally entangled by needlepunching or hydroentanglement (page 8, lines 33-35). The filament may be either solid or hollow (Figure 1)

Art Unit: 1771

and have a round (Figures 1, 4, and 6) or "odd-shaped" cross-sectional area. (Figures 2, 3, and 5) (claim 7). Additionally, the filament may be a bicomponent fiber (Figures 4-6) (claim 8). The filament has a crystallization degree of 7-40% (claim 23).

Thus, it can be seen that Nagaoka anticipates Applicant's claims with the exception of the presently claimed birefringence and heat shrinkage. However, it is reasonable to presume that the invention of Nagaoka inherently possesses said birefringence and heat shrinkage. Support for said presumption is found in the use of like materials (i.e., polylactic acid filaments with a crystallization degree of 7-40%) and the use of like processes (i.e., nonwoven with partial bonding by means of heat and pressure). The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the presently claimed properties of birefringence and heat shrinkage would obviously have been present once the Nagaoka nonwoven is provided. *In re Best*, 195 USPQ 433. therefore, claims 1-7 are rejected as being anticipated by or obvious over the cited Nagaoka reference.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

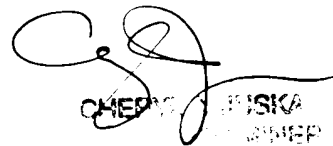
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Application Control Number: 09 720,629

Page 5

Art Unit: 1771

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



A handwritten signature in black ink is written over a rectangular stamp. The stamp contains the text "CHIEF" on the top line, "JUSKA" on the middle line, and "CHIEF" on the bottom line.

cj
November 18, 2002